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OLIFF & BERRIDGE, PLC
P.O. BOX 320850
ALEXANDRIA, VA 22320-4850

In re Application of:
OHARA, KIYOTAKA
Application Serial No.: 10/669,877
Filed: September 25, 2003
For: **IMAGE READING DEVICE FOR
TRANSMITTING IMAGE DATA TO TERMINAL
DEVICE**

**DECISION
ON PETITION**

This is a decision on the petition under 37 CFR 1.182 filed January 26, 2009 to request a refund of fees paid on filing of a Notice of Appeal filing fee and three-month extension of time filed October 14, 2008. The petition is treated under 37 CFR 1.181.

The Petition is **Denied**.

Petitioner asserts that the need to file the Notice of Appeal and three-month extension of time was based solely on the extensive delay caused by the Patent Office.

A review of the file history finds a Final Rejection was mailed April 14, 2008. An Interview was held on July 11, 2008, than followed with the filing of an after-final response on July 14, 2008. On October 14, 2008, applicant filed three-month extension of time along with the Notice of Appeal. On October 20, 2008, the Notice of Allowance was mailed including an Examiner's Amendment.

Given that an examiner's amendment was made on October 20, 2008 to place the application in condition for allowance, then in accordance with MPEP §706.07(f), subparts (G) and (J), if the time period for response to the outstanding final Office action was outside of the 3-month shortened statutory period for response, applicants were required to pay for the appropriate extensions of time in order for the examiner to perform an examiner's amendment.

MPEP §706.07(f) [R-6] Time for Reply to Final Rejection, states in part:

(G) Where a complete first reply to a final Office action has not been filed within 2 months of the final Office action, applicant's authorization to make an amendment to place the application in condition for allowance must be made either within the 3 month shortened statutory period or within an extended period for reply that has been petitioned and paid for by applicant pursuant to 37 CFR 1.136(a).

(J) Replies after final should not be considered by the examiner unless they are filed within the SSP or are accompanied by a petition for an extension of time and the appropriate fee (37 CFR 1.17 and 37 CFR 1.136(a)). See also MPEP §710.02(e). This requirement also applies to supplemental replies filed after the first reply.

The application file having been allowed, will be forwarded to Office of Publication for appropriate action in due course.

Wanda S. Walker

Wanda Walker
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